

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

RECORD IN  
REGULATORY AUTH.

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In Re: Complaint of XO Tennessee, Inc.  
Against BellSouth Telecommunications,  
Inc.

Complaint of Access Integrated  
Networks, Inc. Against BellSouth  
Telecommunications, Inc.

) OFFICE OF THE  
) EXECUTIVE SECRETARY

) Docket No. 01-00868  
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**MOTION TO AMEND COMPLAINTS**

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Access Integrated Network, Inc. ("AIN") and XO Tennessee, Inc. ("XO") move to amend the above-captioned complaints against BellSouth Telecommunications, Inc. ("BellSouth").

Based upon the documents provided by BellSouth in response to discovery requests from AIN, XO, and the TRA Staff, it is now apparent that the two instances of illegal conduct alleged in the complaints are not isolated incidents, as BellSouth initially contended (see, e.g. paragraph 7 of BellSouth's Answer to the AIN complaint), but are part of a region-wide marketing plan called BellSouth Select that began in 1999. The stated purpose of the plan is to build customer loyalty among existing BellSouth customers and to win back former BellSouth customers now served by competing carriers. Pursuant to that plan, thousands of selected BellSouth customers have received non-tariffed rebates of goods and services, including cash and discounts on tariffed services, in exchange for the purchase of tariffed communications services while other BellSouth customers who purchased the same tariffed services received no such rebates.

Based upon this additional information, AIN and XO move to amend their complaints to add the following supplemental paragraphs:

1. BellSouth Select, Inc. ("BellSouth Select") is a wholly owned subsidiary BellSouth Corporation which is the parent company of BellSouth Telecommunications, Inc.
2. Beginning in 1999, BellSouth Select began a marketing program in Tennessee in which selected customers or potential customers of BellSouth were offered or provided valuable goods or services, including cash and discounts on tariffed services, in exchange for the purchase of BellSouth's tariffed telecommunications services.
3. There is not now, and never has been, any BellSouth tariff or promotional offering on file with, or approved by, the Tennessee Regulatory Authority which authorizes BellSouth to offer or provide the above-described valuable goods and services in exchange for the purchase of regulated telecommunications services.
4. The use of any "rebate, drawback, or other device" by which BellSouth has "directly or indirectly" charged one customer more or less than another for the same service constitutes "unjust discrimination," and is a criminal offense under state law. T.C.A. § 65-4-122.
5. Because the terms and conditions of the BellSouth Select program are not tariffed, BellSouth has violated T.C.A. § 65-5-201 and T.R.A. rules 1220-4-1-.03 and 1220-4-8-.09(2)(c)(3).
6. For BellSouth to offer or provide non-tariffed goods and services as an inducement or reward for the purchase of competitive tariffed services constitutes cross-subsidization, a preference to BellSouth's competitive services, price discrimination, and is an anti-competitive practice, in violation of T.C.A. § 65-5-208(c).
7. For BellSouth to offer or provide valuable goods and services to some selected customers in exchange for the purchase of tariffed services while not offering or providing those goods and services to other customers who purchase the same tariffed services is a practice which is unduly preferential or discriminatory in violation of T.C.A. § 65-4-117.

8. BellSouth's failure to offer or provide the benefits of the BellSouth Select program to wholesale customers of BellSouth's tariffed services is a violation of BellSouth's obligation under federal law to make BellSouth's tariffed services available for resale under the same terms and conditions as BellSouth offers those services to its own customers, less avoided costs. *See* 47 U.S.C. §§ 251(c)(4) and 252(d)(3); *see also* 47 C.F.R. §§ 51.607(a) and 51.603.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 

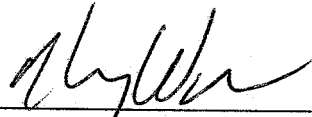
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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via fax or hand delivery and U.S. mail to the following on this the 29th day of November, 2001.

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